

2 *Setting Up A Budget*

OVERVIEW



Before you begin work on a legal matter, you must prepare a case plan explaining how you plan to accomplish the work for which you have been retained, along with a budget showing the phase-by-phase breakdown of the anticipated cost of legal representation. The case plan and budget must be submitted together, prior to any other costs being incurred. The information provided in the budget controls the payment of invoices. Except in a case of urgency (as defined by the FDIC), the case plan and budget must be approved by the FDIC before you begin working on the legal matter.

The budget must be approved before you can be paid for a legal matter.

You must also complete a budget worksheet if fees and expenses are estimated to be greater than \$25,000, or if the Oversight Attorney requests that you do so.

If you have to amend your budget, you must submit an amended budget (and sometimes an amended budget worksheet). See Chapter 6 (Amending A Budget) for details of this process.

This chapter gives you information on the following:

- ⇒ Completing the case plan and budget
- ⇒ Submitting the case plan and budget
- ⇒ Budget Forms
- ⇒ Budget Worksheets

SCENARIO***Why Submit a Budget?***

Maggie Lyons, an attorney in the Legal Division of FDIC, sent a referral letter to Peter Williams at Williams and Gregory Associates informing him that he could start work on a legal matter for the FDIC. Peter, excited at the prospect of working for the FDIC, began working on the matter immediately.

Three weeks later, after completing phase one of the matter, Peter submitted an invoice. The Legal Division at FDIC returned his invoice, stating that he couldn't get paid since he hadn't submitted a budget. Peter was perplexed. He checked his referral letter and **Outside Counsel Deskbook** and saw that he should have submitted a budget *immediately* after getting permission to work on the matter.

Consult this Deskbook every time you start a new step when working on a legal matter for the FDIC.

COMPLETING THE CASE PLAN

Upon receipt of a referral, you should first discuss the matter with the Oversight Attorney. Then, prepare a case plan that sets forth the major steps you will take to accomplish asset recovery, or successful defense or prosecution of a case. The case plan outlines the anticipated course of litigation based on the assumption that the matter will go to trial. It also proposes a plan for settlement, unless settlement is clearly inappropriate. The level of detail provided in the case plan will depend on the complexity of a matter and the potential budget.

If you are handling a number of cases that are routine and involve similar issues or approaches, you may develop and submit a standard case plan applicable to all such cases. Once the FDIC has approved your standard case plan, you may indicate to the FDIC that substantially similar routine cases generally will follow that plan. When appropriate, note factors that differ between cases in the case plan.

You may submit a standard case plan for several cases if they are routine and involve similar issues.

COMPLETING THE CASEPLAN (cont.)



NOTE: *You should always consider whether cost savings can be achieved by resolving a dispute through alternative dispute resolution (ADR). For more information on ADR, refer to the **Guide for Outside Counsel**.*



NOTE: *It is your responsibility to make certain a case plan is appropriate for the particular matter and is provided to and approved by the FDIC Oversight Attorney prior to incurring any associated costs.*

Checklist for the case plan



Follow this checklist to ensure you have completed the case plan properly.



Are the scope and detail of the case plan commensurate with the significance of the matter?



Does your case plan set forth major assumptions and strategies, and project the schedule for preparing and trying the case, including all expected litigation events?



Have expensive or time consuming activities been divided into subparts? For example, you should provide adequate detail about discovery to be taken, issues requiring extensive research, or anticipated defenses that may complicate the litigation.



Does your case plan summarize strategy to achieve a negotiated settlement of the case, with emphasis on opportunities for early resolution, including the use of ADR?

COMPLETING THE BUDGET

Types of Budget Forms



Along with your case plan, you must obtain approval of your budget from the FDIC Oversight Attorney.

The budget translates the case plan into financial expectations. There are four individual budget forms, each corresponding to a legal matter type, which are subject to the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35). Outside Counsel is advised it is not required to respond to the collection of this information unless the Budget forms and worksheets, including amended forms and worksheets, display a current valid OMB control number. The OMB control number for all budget forms and worksheets is 3064 – 0122 and expires on November 30, 1999. The four budget forms are:

- Litigation/PLS (including Adversary Bankruptcy)
- Appellate
- Bankruptcy (Non-Adversary)
- Non-Litigation/Transactional (also used for Administrative and Resolution/Receivership matters).

The type of budget form you need depends on the nature and amount of the matter and the issues involved. Your budget should:

- Conform to the case plan
- Identify specific phases of a case
- Estimate the cost of each phase.

Make sure your budget conforms to your case plan for the legal matter.

**COMPLETING THE
BUDGET (cont.)****Types of Budget
Forms (cont.)**

Certain budget forms have a certain number of phases. When you submit an invoice to the FDIC, make sure your invoice corresponds to the correct phase of your budget.

The **Litigation/PLS** budget has five phases:

Phase	Description
Phase I	Investigation
Phase II	Initial Pleadings, Responsive Pleadings, Motions Discovery
Phase III	Pretrial/Trial Preparation
Phase IV	Trial
Phase V	Post-Trial Matters

The **Bankruptcy** budget has three phases:

Phase	Description
Phase I	Investigation and Initial Pleadings
Phase II	Pre-Confirmation/Discharge Pleadings, Motion and Discovery
Phase III	Post Confirmation/Post Discharge Matters

The **Appellate** and **Non-Litigation/Transactional** budgets have one phase each.

**COMPLETING THE
BUDGET (cont.)****Budget Completion
Steps**

To submit a budget, you need to complete a budget package. This package contains:

- case plan (see *Page 2-2*)
- A budget form
- A budget worksheet (required when fees and expenses are estimated to be greater than \$25,000 or when otherwise requested by the Oversight Attorney). See *Page 2-9* for information on the budget worksheet.

Sample budget forms and worksheets can be found in Appendix A at the end of the Deskbook.

Following are the steps for completing a budget form.

1. Select the budget form appropriate for your legal matter (see samples in Appendix A).
2. Indicate in the appropriate box whether you are billing at an hourly rate, fixed fee, Task Order Agreement (TOA) fee, or contingent fee basis.
3. Refer to the table below to determine the action necessary for the billing rate you entered.

RATE	ACTION
Hourly	⇒ Complete all phases of the budget in which legal expenses are expected to be incurred

COMPLETING THE BUDGET (cont.)

Budget Completion Steps (cont.)

RATE	ACTION
Fixed Fee	<p>⇒ Record the fixed fee</p> <p>⇒ Submit the estimated completion date and allowable related expenses for each phase</p>
Contingent Fee	<p>⇒ Record the contingent fee</p> <p>⇒ Submit the estimated completion date and expenses for each phase</p> <p>⇒ Document the percentage figure to be used in the contingent fee calculation and the estimated recovery amount (or other amount) upon which the percentage figure will be calculated</p>
TOA	<p>⇒ Record the appropriate fee</p>

Use this table as a guide to the action to take for each type of billing rate.

4. Note the estimated completion dates and allowable related expenses.
5. If appropriate, calculate the total estimated number of hours for all service providers for each phase or action.
6. Sign and date the budget.

**COMPLETING THE
BUDGET (cont.)****Checklist for
Completing a
Budget**

Before submitting your budget, check the following:

- ☒ Have you completed the appropriate budget form (Litigation/PLS, Appellate, Bankruptcy, or Non-Litigation/Transactional)?
- ☒ Have you marked the appropriate box to indicate whether the attorney fees are be billed at an hourly rate, fixed fee, contingent fee, or TOA fee basis?
- ☒ If you plan to bill based at an hourly rate, have you completed all phases of the budget for which legal expenses are expected to be incurred?
- ☒ Have you noted the estimated completion dates and allowable related expenses for each phase?
- ☒ Have you calculated the total estimated number of hours for all service providers for each phase or action, if appropriate?
- ☒ If you plan to bill on a fixed fee, contingent fee, or TOA fee basis, have you recorded the appropriate fee?

COMPLETING THE BUDGET (cont.)

Checklist for Completing a Budget (cont.)



If you plan to bill on a fixed fee or contingent fee basis, have you documented the percentage figure to be used in the contingent fee calculation and the estimated recovery amount (or other amount) upon which the percentage figure will be calculated?



Have you signed and dated the budget?



NOTE: *If the budget is in excess of \$100,000, ensure that you submit forms required to comply with the Byrd Amendment (refer to Appendix E for details).*

DO I NEED A BUDGET WORKSHEET?

Sometimes you will need to complete a budget worksheet along with the budget form. The worksheet is a tool to provide the FDIC Oversight Attorney with needed details about the cost of legal representation.

You will need to complete a budget worksheet if:

- Fees and expenses are estimated to be greater than \$25,000 or,
- The Oversight Attorney requests the worksheet.

You do not need to complete a budget worksheet for Non-litigation/Transactional and Appellate Legal Matters unless requested to do so by the Oversight Attorney.

The budget worksheet provides the Oversight Attorney with more details about the budget.

DO I NEED A BUDGET WORKSHEET (cont.)?

Budget Worksheet Steps



Following are the steps for completing a budget worksheet.

1. Document in the space provided the legal fees and expenses for each legal action deemed necessary.
2. Document in the space provided the Estimated Hours for Completion of each phase.
3. Describe any “other” actions and document the estimated total hours and legal fees associated with these “other” actions.
4. Itemize any related expenses for each phase on an attached sheet.

Checklist for the Budget Worksheet



Before submitting your budget worksheet, use the following checklist.

- ☒ Have you documented the estimated total legal fees and expenses for each legal action deemed necessary? Are the legal actions described in your case plan?
- ☒ Have you documented the Estimated Hours For Completion for each phase?

Check that the totals on your budget worksheet match the totals on your budget form.

DO I NEED A BUDGET WORKSHEET? (cont.)

Checklist for the Budget Worksheet (cont.)



Have you itemized related expenses for each phase on an attached sheet?



Does the total for each phase equal the dollar amount entered on the corresponding section of the budget?



Does the grand total of all phases equal the dollar amount entered on the corresponding section of the budget?

SUBMITTING THE BUDGET

Case plan and Budget Submission Steps



Once you have completed the budget package, you must submit it to the FDIC. The following steps outline the submission and approval process.

1. Discuss the matter with your FDIC Oversight Attorney to be sure you are in agreement.
2. Submit the budget package to the Legal Information Technology Unit or as instructed in your referral letter. This package consists of the case plan, budget form and, when necessary, the budget worksheet.



NOTE: *The estimates provided in your budget forms are used on an ongoing basis by the FDIC to assess cost-effectiveness and to measure progress. The Legal Division recognizes that estimates may be affected by changed circumstances; but, because the estimates are used in making business judgments, they must be as accurate as possible.*

3. The FDIC Oversight Attorney reviews the budget package. After the Oversight Attorney has considered the budget, FDIC approval is obtained under the appropriate delegated authority.
 4. The FDIC returns copies of the approved budget package to you.
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**FREQUENTLY
ASKED
QUESTIONS**

Below you will find answers to questions often raised by Outside Counsel when submitting budgets.

Why is a good estimated budget so important?

It is important to submit a budget with accurate estimates so the FDIC can make informed business decisions about proceeding with matters and/or setting strategies. In addition, an approved budget is important for you to get paid.

Where should I submit my budget?

Send your budget directly to the Legal Information Technician responsible for processing your paperwork or as instructed in your referral letter. If you submit your budget to the Oversight Attorney, there may be a delay in processing the paperwork.

Can I submit my case plan first and send the budget in later?

No. You must submit the case plan and the budget (and budget worksheet, if required) at the same time. You should however, discuss the case plan with the Oversight Attorney before submitting it for approval.
